

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3651 OF 1993

Shri Prakash Bhupal Chavan .. Petitioner

Versus

Benadikar Education Society
and Ors. .. Respondents

Mr.M.S.Lagu i/b Mr.R.S.Apte for the petitioner

Mr.K.V.Saste for respondent no.1 and 2

Mr.Y.D.Mullani, A.G.P. for respondent no.3 and 4

**CORAM: A.P.SHAH &
S.U.KAMDAR, JJ**

DATED: 13TH SEPTEMBER, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. The present petition is filed seeking a declaration that the petitioner is entitled to condonation of break in his service and consequently proper pay fixation. Some of the material facts are as under:

2. On 1st July 1978, the petitioner was appointed in the High School run by the Benadikar Education

Society, Kolhapur. The petitioner's services being temporary he was required to work in various schools from time to time as and when his temporary appointment period expired in a particular school. On 2nd August 1982 the petitioner was appointed in the Shreeram High School and was working in Shreeram High School till his superannuation. During his service period when he was appointed in various school there were breaks in his services. The petitioner therefore made a representation to the Education Officer, Zilla Parishad, Kolhapur. It is his case that on 29th August 1991 the 2nd respondent was directed by the Education Officer to give benefit of condonation of break to the petitioner in light of the G.R. dated 10th May 1989.

3. It is the case of the petitioner that inspite of the said direction of the Education Officer the petitioner has not been given the benefit of condonation of break in service in accordance with G.R. issued by the Government. The petitioner has therefore filed the present petition seeking the

aforesaid reliefs. No affidavit in reply has been filed by the authorities. However, respondent no.1 and 2 who are the Management have filed their affidavit in reply in this High Court opposing the grant of any relief in the present petition. The Government Resolution dated 10th May 1989 which is relevant for the issue of condonation of service break inter alia provides as under:

"The provisions and conditions specified in para 7 of G.R. dtd. 4/11/1968 & dtd. 30/8/1972 are as under :-

1. The service break should not be more than 6 during the entire service.
2. Out of 6 service breaks, the service breaks should not be more than 3 for the reason of resignation.
3. The entire period of six service breaks should not be more than 2 years.
4. Out of 6 service breaks, the period of any service break should not be more than 12 months.
5. It should not been served anywhere during the service break.
6. Service break should be from one or other approval granted Secondary Schools Services.

2. With respect to this, it is clear that the aforesaid right of condonation of service

break for the pension are given to the Divisional Dy. Directors. Institution is not given any right with respect to this. Only the records shall be taken from the Institution in respect of the service break which the Dy. Director of Education can make.

3. In which matters, the conditions as mentioned above i para 2, do not satisfy, it is necessary to send such matters to the Govt. for direction. In such matters, according to G.R. dtd. 12//1976, the rights of condoning the service break are given to the Divisional Secretary by relaxing the conditions in para 7 of G.R. dtd. 4/11/1968 & 30/8/1972. That conditions are as follows:-

1. The service break for the teaching and non teaching staff should not be after 30/9/1974 & 31/12/1974 respectively.

2. The total service break alongwith the technical service break should not be more than 10 & out of that the service break should not be more than 4 for the reason of resignation.

3. The service break should have been made for the following reasons:-

a. Unemployment

b. Part time service due to non availability of full time service.

c. The services in Night Schools, Colleges and other Institutions which are under only one management & to which the rules of pension scheme are not applicable and the services in unaided & non-approved schools.

d. For taken part in the National Movement.

4. Thus, the aforesaid G.R. entitles the

petitioner for grant of condonation of break. However, the said G.R. dated 10th May 1989 inter alia provides that the said power of condonation of break can be exercised only by the Divisional Deputy Director of Education. In the present case, no such order has been passed by the Divisional Deputy Director of Education. However, order is supposed to have been passed by the Education Officer. Therefore, there is no valid condonation of break in service in favour of the petitioner herein.

5. In the light of the aforesaid circumstances, we are of the opinion that the matter should be directed to be decided by the Divisional Deputy Director of Education in terms of the said resolution dated 10/5/1989. Accordingly, we direct the Divisional Deputy Director of Education to decide the case of the petitioner for condonation of break in service and pass necessary order in that behalf. The petitioner will present himself before the Divisional Deputy Director of Education on 28th September 2004 at 11 a.m. and the

Divisional Deputy Director shall decide the matter expeditiously and in any event within a period of 4 weeks from today. We dispose of the petition accordingly. However, there shall be no order as to costs.